

UNITED STATES OF AMERICA

V.

MICHAEL PAUL MISELIS,
Defendant

Motion for Release Pending Appeal

Miselis is scheduled for sentencing on July 19, 2019. Miselis intends to file a notice of appeal immediately after being sentenced.

Factual Background

Investigative Report (PSIR), Mr. Miselis is a life-long resident of the State of California, in the Stockton area. Until the instant case, Mr. Miselis has never been accused of committing a crime. At the time of his arrest, Mr. Miselis was a Ph.D. candidate in the Aerospace Engineering Program at U.C.L.A. Mr. Miselis was also employed with Northrup Grumman as a Modeling and Simulation Analyst. Mr. Miselis intends to complete his Ph.D. program upon release from confinement. Mr. Miselis's mother, Judy Miselis, of Stockton, California, will be present at the sentencing hearing on July 19, 2019. Mr. Miselis's father, Dr. Kenneth Miselis, owns Heritage, Eye, Skin, and Laser Center in Stockton, California. Dr. and Mrs. Miselis intend to allow defendant Miselis to live with them after he is released from custody. Mr. Miselis is assured a fixed and stable residence, in addition to his continuing graduate studies.

Statutory Requirements

Pursuant to the requirements of 18 U.S.C. §3143, the defendant maintains that under these circumstances he is not a flight risk and does not pose a danger to the safety of any person or the community if released pending an appellate decision. The anticipated appeal will be narrowly focused on the constitutionality of the statute under which Mr. Miselis stands convicted. The appeal is not for the purposes of delay and raises a substantial question of law that, if successful, will result in a reversal of the conviction. Importantly, Mr. Miselis need not show a likelihood of success on appeal, United States v. Garcia, 340 F.3d 1013, 1020, n. 5 (9th Cir. 2003), but only that the appeal presents an issue that could be decided either way. United States v. Steinhorn, 927 F.2d 195, 196 (4th Cir. 1991). It is noteworthy that the so-called "Chicago 7" case originating in 1968, to the cases arising from the 2016 presidential inauguration in Washington, D.C., to the prosecution of the RAM defendants in the Central District of California in 2019, it is difficult to identify a defendant who was convicted under 18 U.S.C. §2101, or whose conviction under that statute was affirmed on appellate review.¹ Last month a district court in the Central District of California considered the identical constitutional issue that Mr. Miselis intends to raise on appeal and concluded, on June 3, 2019, that 18 U.S.C. §2101 is facially unconstitutional. The California district court in these cases accordingly issued an Order dismissing the indictments against the

several defendants prosecuted thereunder. (United States v. Rundo, Case No. 2:18-cr-00759 (C.D. Cal., June 3, 2019). That decision is now under appellate review and clearly constitutes a substantial question of law.

Respectfully Submitted,

MICHAEL PAUL MISELIS

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Thereby certify that on this 18th day of July, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system that will send notification of such filing to all counsel of record.

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